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FILED
DISTRICT COURT OF GUAM

DEC 11 2006 *mba*

MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

TCW SPECIAL CREDITS, et al.

Plaintiffs,

v.

FISHING VESSEL CHLOE Z,
Et al.,

Defendants.

Case No. 96-00055

PLAINTIFFS ROBERT MATOS AND
SLOBODAN PRANJIC'S MOTION TO
WITHDRAW FUNDS TO SATISFY
THEIR *IN REM* JUDGMENT

Plaintiffs ROBERT MATOS and SLOBODAN PRANJIC, by their
counsel, Dwight Ritter, move to withdraw funds from the Court
Registry to satisfy their priority *in rem* judgments based on the
following:

1. On October 17, 2006, MATOS and PRANJIC filed their
motion to establish prejudgment and post-judgment interest on
their *in rem* judgments. This request is pending in the Guam

ORIGINAL

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2 District Court.

3 2. On October 23, 2006, MATOS and PRANJIC filed their
4 status report to Judge Coughenour regarding the status of the
5 collection of the judgments.

6 3. On November 21, 2006, MATOS and PRANJIC filed their
7 Request for Judicial Appointment of Judge John Coughenour and
8 that request is pending in the Guam District Court.

9 4. Plaintiffs are requesting a written accounting of all
10 funds deposited and withdrawn from the Court Registry that
11 relate to the TCW action. This accounting should include the
12 initial deposit of approximately \$ 6,000,000 which reflected the
13 proceeds from the initial sale of the F/V Chloe Z. Please note
14 the funds pertaining to the TCW action may have been held in
15 more than one banking location. Based on the recent TCW "status"
16 report, it appears that funds may be held, not only in the Bank
17 of Guam, but also in the Bank of Hawaii. If this is true, all
18 claimants are entitled to know the full amount of the proceeds
19 in the Court Registry and whether any disbursements were made on
20 a non-priority basis. In other words, have any claimants
21 withdrawn funds from the Court Registry that were not a priority
22 lien over other claimants. In addition, it remains unknown as
23 to whether Sphere Drake, the insurance carrier for F/V Chloe Z,
24 has fulfilled its obligation to indemnify the Court Registry
25 based upon a \$ 25,000,000 Protection and Indemnity insurance
26 policy that existed before the F/V Chloe Z was sold. It remains
27 unknown as to whether the approximately \$ 750,000 that was
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3 withdrawn from the Court Registry to pay the Mazic claims were
4 then reimbursed by Sphere Drake's indemnity policy.

5 To clarify these issues, MATOS and PRANJIC are seeking a
6 written accounting of all deposits and withdrawals from the TCW
7 accounts held in the Court Registry since commencement of these
8 proceedings.

9 5. On October 20, 2006, F/V Chloe Z filed its application
10 for extension of time to file a petition for writ of certiorari
11 to the U.S. Supreme Court. Assuming that F/V Chloe Z files for a
12 writ of certiorari to the U.S. Supreme Court, that action does
13 not in any way prevent MATOS and PRANJIC from withdrawing funds
14 from the Court Registry to partially or fully satisfy their
15 pending judgments in the amount of approximately \$ 2,375,000.
16 MATOS and PRANJIC fully intend to withdraw all available funds
17 from the Court Registry, with the exception of \$ 50,000, in
18 order to maintain the account for administrative fees or costs
19 that may occur in the future.

20 6. In lieu of withdrawal of these funds from the Court
21 Registry, F/V Chloe Z may seek to post a bond to secure MATOS
22 and PRANJIC that upon completion of the appeal to the U.S.
23 Supreme Court that full and complete payment of the *in rem*
24 judgments will occur and without further delays. Under Federal
25 Rules of Civil Procedure 62(d), this supersedeas bond for the
26 payment of MATOS and PRANJIC judgments must be adequate to
27 satisfy not only the judgment, but also all costs and interests,
28 including prejudgment and post-judgment interests. Currently,

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2 the MATOS and PRANJIC judgments are accruing over \$ 280 per day,
3 as legal interest.

4 Plaintiffs MATOS and PRANJIC, as ordinary seamen and wards
5 of the court, are entitled to the protections and security
6 provided under 28 U.S.C. Section 2464. Defendant CHLOE Z, under
7 Section 2464, allows CHLOE Z to stay the execution of process
8 against the CHLOE Z "so long as the amounts secured by such bond
9 or stipulation is at least double the aggregate amount claimed
10 by libellants in such suits which are begun and pending against
11 such vessel. Similar judgments or decrees and remedies may be
12 had on such bonds or stipulation as if this special bond or
13 stipulation has been filed in each of such suits." In this case,
14 CHLOE Z, claiming representation of the funds in the Court
15 Registry, must post a bond at least "double" the amount of the
16 pending judgments, with interest. MATOS and PRANJIC are
17 entitled to approximately \$ 2,375,000 and double that sum equals
18 \$ 4,750,000. Further, the Guam District Court has the authority
19 under Section 2461(b) to make necessary orders to carry this
20 section into effect and such bonds shall be endorsed by the
21 clerk wherever process is so stayed.

22 7. In addition, seamen are entitled to the protection of
23 their claims under Supplemental Rules for Certain Admiralty and
24 Maritime claims as well. Under Rule F(7), "Insufficiency of
25 Fund or Security", any claimant may demand the funds to be
26 deposited into the court be increased on the grounds that they
27 are less than the value of plaintiff's interest. Thereupon the
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3 court shall determine by appraisalment, if necessary, the value
4 of the plaintiff's interest and if the depositor's security is
5 insufficient to carry out the provisions of the statutes
6 relating to claims regarding loss of life and bodily injury, the
7 court shall order its increase. The district court may similarly
8 order that either the depositor or the security be increased, if
9 necessary. Thus, the district court is requested to require the
10 posting of a supersedeas or special bond in the amount of
11 \$ 4,750,000 to secure their judgments with interest, in the
12 event that MATOS and PRANJIC's request to withdraw funds is
13 stayed pending appeal.

14 8. Thus, MATOS and PRANJIC are seeking a special or
15 supersedeas bond, to cover all potential known and unknown
16 contingencies that may occur which might delay payment of the *in*
17 *rem* judgments. Without a supersedeas bond to secure their full
18 judgments, and not partial judgments, MATOS and PRANJIC are
19 fully entitled to withdraw adequate funds to, at least,
20 partially satisfy their *in rem* judgments and recover some of
21 their substantial expenses in the TCW action. Further, partial
22 payment will reduce the daily interest that is currently
23 accruing against CHLOE Z and thus lessen F/V CHLOE Z's financial
24 burden if their appeal is unsuccessful.

25 Wherefore, MATOS and PRANJIC, request equitable and legal
26 relief based on their requests and an order as follows:

27 1. A full written accounting of all deposits and
28 withdrawals from the TCW accounts which are held in the Court

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2 Registry at several banking locations in order to determine the
3 status of the approximately \$ 6,000,000 that was deposited in
4 the Court Registry for all lien claimants.

5 2. Allow withdraw of all available funds from the Court
6 Registry in the TCW accounts to, at least, partially satisfy the
7 MATOS and PRANJIC judgments that are currently in excess of
8 \$ 2,375,000. MATOS and PRANJIC also request that \$ 50,000 be
9 left in the Court Registry to cover any future costs or
10 administrative expenses and to maintain the account.

11 3. In lieu of withdrawing funds, F/V Chloe Z and their
12 representatives, may post an adequate and sufficient supersedeas
13 bond payable to fully satisfy the MATOS and PRANJIC judgments
14 and any possible future interest and costs in the amount of
15 \$ 4,750,000.

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17 Dated: December 8, 2006

George Butler
GEORGE BUTLER, Esq.
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ROBERT MATOS and
SLOBODAN PRANJIC